IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 954 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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RAJENDRA MANEKLAL TADVI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR G RAMAKRISHNAN for the Appellant.
Ms. Nandini Joshi, Additional PUBLIC PROSECUTOR for the respondent.

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HONOURABLE MR.JUSTICE DN PATEL

Date : 16/06/2006

ORAL JUDGMENT

The present appeal has arisen out of the judgment and order dated 7th December, 2001 in Sessions case no. 191 of 1999 passed by the learned Additional Sessions Judge, Bharuch, by which the appellant-accused has been convicted and sentenced to undergo seven years'

simple imprisonment, and pay a fine of Rs. 700/-, in default, 20 days' simple imprisonment, for the offence punishable under section 376 and simple imprisonment of one year and pay a fine of Rs. 200/-, in default, 10 days simple imprisonment for the offence punishable under section 506(2) of the Indian Penal Code.

2. Brief facts leading to the present appeal are that when the prosecutrix was in the field, the present appellant committed rape on her on 28th February, 1999 at 5.00 p.m. taking benefit of the fact that the husband of the prosecutrix had gone home from the field. The prosecutrix shouted and immediately her husband came. The present appellant had run away leaving at the scene of offence, his several belongings including pant, belt, slipper etc. The prosecutrix being a rustic witness, residing in a small village, waited for the outcome of caste panch for the settlement, but the appellant was not available. Thereafter, on 3rd March, 1999, a complaint was registered at Garudeshwar police station, Bharuch. (now in Narmada district). The appellant was arrested on 21st June, 1999. Thereafter, after investigation, charge-sheet was filed. The appellant was prosecuted and on the basis of various prosecution witnesses and other documentary evidence, the appellant has been convicted and sentenced to undergo seven years' simple imprisonment

for the offence punishable under section 376 of the Indian Penal Code.

3. The learned advocate for the appellant submitted that there are lot of omissions and contradictions in the depositions of prosecution witnesses. This has not been properly appreciated by the trial court and therefore, the order of conviction and sentence passed by the trial court deserves to be quashed and set aside. It is also submitted by him that if a close look is given to the deposition of prosecutrix - p.w. 1 at exh. 8, then it cannot be said that the appellant is guilty of the offence punishable under section 376 of the Indian Penal Code. On the contrary, this is a case of clear consent by the prosecutrix. Her age was approximately 30 years. Even the deposition of Dr. Manoj Birendraprasad p.w. 7 at exh. 19 is also supportive of innocence of the present appellant. The doctor has categorically stated that in his opinion, no real rape has been committed. Therefore also, the judgment and order of conviction and sentence passed by the trial court deserves to be quashed and set aside.

4. I have also heard the learned Additional Public Prosecutor who has submitted that the judgment and order of conviction passed by the trial court is absolutely

true and correct and in consonance with the evidence led by the prosecution before the trial court. There is no error in appreciation of the evidence by the trial court. On the contrary, the deposition of prosecutrix which is at exh. 8 has enough corroboration from other documentary evidence on record, especially by exh. 19- doctor's deposition and and by exh. 31 which is Serologist report. The appellant-accused was also not available to the police till 21st June, 1999 after filing of complaint dated 28.2.1999 The accused had run away after committing the offence of rape. There are no omissions and contradictions in the depositions of prosecution witnesses. On the contrary, the prosecution witnesses, p.w.1 -prosecutrix andp.w. 6 who is the husband of the prosecutrix have given clear depositions which are further supported by the deposition of p.w.7 at exh. 19 and therefore, the judgment and order of conviction and sentence passed by the trial court may not be altered by this Court.

5. Having heard the learned advocates for both the sides and looking to the facts and circumstances of the case, I am of the opinion that the judgment and order dated 7.12.2001 in Sessions Case No. 954 of 2001 passed by the learned Additional Sessions Judge, Bharuch is absolutely true and correct and in consonance with the

evidence on record and it requires no interference by this Court, for the following facts and reasons.

(i)Looking to the deposition of the prosecutrix p.w. 1 at exh.8, it appears that she has clearly narrated the incident whereby it is proved beyond reasonable doubt that the appellant has committed the offence punishable under section 376 of the Indian Penal Code. Against her will, the appellant has committed rape on her on 28th February, 1999 at 5.00 p.m. in the field. The prosecutrix shouted. Her husband came immediately and the appellant had run away, leaving behind, at the scene of offence, several belongings like pant, belt, slippers etc. Her deposition is having enough corroboration by the deposition of the doctor and Serologist's report at exhs. 19 and 31 respectively. In my opinion, she is a trustworthy witnesses and there are no omissions and contradictions in her deposition.

(ii) It is submitted by the learned advocate for the appellant that the complaint has been filed at much belated stage, that is, on 3rd March, 1999, after the date of incident which took place on 28th February, 1999. Therefore,

the whole prosecution story is concocted and is an afterthought. This contention is not accepted by this Court for the simple reason that it is narrated in the complaint itself as well as in the deposition of the prosecutrix at at exh. 8 that immediately after 28th February, 1999, she was much worried about her prestige in the society. She and her family members waited for the caste panch to decide this issue and for settlement, but the appellant was not available at all to the caste panch and therefore, there was a delay in filing of the complaint. This delay is in no way fatal to the prosecution case and is not helpful to the appellant at all. Such type of behaviour of the prosecutrix and her family members is absolutely normal looking to the society from which the prosecutrix is hailing. Though she is a rustic witness, she has given a clear deposition which is in consonance with the complaint and there is enough corroboration though the same is not required. Even threat was administered with the help of a knife by the appellant looking to her deposition.

(iii) Looking to the deposition of pw 6 Jalabhai Shankerbhai at exh. 18, who is the

husband of the prosecutrix, he has given a clear deposition. He has also narrated the whole incident which he has seen and which corroborates the deposition of pw 1 about time and place of offence and as to identity of the accused. Accused was known to both pw 1 and pw 6. There is no exaggerations or omissions or contradictions in his deposition. This witness also is, in my opinion, a trustworthy witness and the trial court has not committed any error or mistake in evaluation of the deposition of prosecution witness no.1 and in convicting the appellant.

(iv) In his evidence, Dr. Manojkumar p.w. 7 at exh. 19, has clearly and specifically referred that the prosecutrix was examined by him and has also given the certificate and in no way his deposition is helpful to the appellant. On the contrary, looking to the deposition at exh. 19 it corroborates the version of the prosecutrix. Constantly, the appellant remained in search of injuries in an offence of Rape. It is explained by this Doctor that injuries in cases of rape are not must. That all depends upon the facts and circumstances of each and every case. Threat was administered with the

help of a knife. There was no question of any injuries whatsoever arises. Considering the depositions of pw 9 and pw 10 at exhs. 26 and 27 as well as the Serologist's report at exh. 31, I am of the opinion that these depositions and the evidence led by the prosecution is absolutely corroborative to the deposition of the prosecutrix. The prosecutrix has narrated an important aspect of the case that the appellant-accused was arrested on 21st June, 1999. Thus, the appellant-accused had run away after the date of incident that is on 28th February, 1999. To run away from the scene of offence and even after complaint is filed is a circumstance going against the appellant-accused. When a question is asked under section 313 of the Code of Criminal Procedure, 1973 to the appellant-accused by the court as to what he has to explain about his arrest on21st June, 1999, the appellant accused failed to explain his absenteeism. This circumstance also corroborates that the appellant accused has committed an offence as alleged by the prosecution.

6. Thus, as a cumulative effect of all the aforesaid

facts and reasons, in my view, the conclusion arrived at by the trial court as to conviction mainly under section 376 and under section506(2) of the Indian Penal Code is true and correct. There is correct appreciation and evaluation of evidence by the trial court. Even the quantum of punishment is in consonance with the guilt of the appellant-accused. There is no error committed by the trial court in convicting and sentencing the appellant. Therefore, there is no substance in this appeal. The same is hereby dismissed.

(D.N.Patel,J)

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